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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.C. No. 72 of 2001

Date of decision: 23.4.2007

The Commissioner, Central Excise Commissionerate-I,

Chandigarh

...Petitioner

Versus

M/s Vardhman Special Steels, Ludhiana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Kamal Sehgal, Advocate for the revenue

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RAJESH BINDAL, J.

The Revenue has approached this Court by filing the present petition under Section 35 H (1) of the Central Excise Act, 1944 seeking a direction to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, 'the Tribunal') to refer the following question of law, arising out of its final order dated 11.12.2000 passed in Appeal No. E/900/99-NB(S), for opinion of this Court:-

> "Whether respondent no.1 is entitled to be allowed the modvat credit on the items like Hot top, Welding Electrodes, Lancing pipe, Grinding Wheel, Foundry Fluxes and Chemicals and unfired bricks, which are not included under Rules 57A(1)(c)(i) of the Central Excise Rules, 1944"

Briefly the facts of the case are that the assessee is engaged in the manufacture of excisable goods falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. It was availing the

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facility of modvat credit under Rule 57A of Central Excise Rules, 1944. During the period in question, the assessee availed modvat credit to the tune of Rs. 3,71,374.28 paise on the items namely fire bricks, grinding weel, Hot Tops, Foundry Chemicals, welding rod Mortar and lancing pipe etc. which claim was disallowed by the adjudicating authority. In appeal, the Commissioner (Appeals) accepted the plea of the assessee and set aside the order passed by the adjudicating authority disallowing the modvat credit. Still in further appeal before the Tribunal, the revenue failed.

We have heard learned counsel for the revenue.

We find that the issue had already been gone into by this Court in **Excise Duty Reference No.7 of 1997 (M/s Oswal Steels, Faridabad Vs. Collector of Central Excise, New Delhi)** decided on December 17, 2004 wherein, inter-alia, referring to the judgment of Hon'ble the Supreme Court in **Central Excise Commissioner, Bangalore Vs. M/s Escorts Mahle Limited, AIR 2003 SC 2234** and judgments of this Court in **Collector of Central Excise, Chandigarh Vs. Zenith Papers 2002 (146) ELT 518** and in **Central Excise Case No.7 of 2001** (**Commissioner of Central Excise, Chandigarh Vs. M/s Bhushan Industries Limited, Chandigarh)** decided on 28.8.2001 a similar question was answered against the revenue. As claim made by the assessee in the present case is squarely covered by the judgment of this Court in its favour, we do not find any question of law arises in the present case.

Accordingly, the petition is dismissed.

(Rajesh Bindal)
Judge

April 23, 2007 **(M.M.Kumar)**
Pka **Judge**

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Heating elements, emery belts, fire caly, graphite powder, grinding wheel, plastic tape and mould cote declared as input under Rule 57A of the Rules could qualify for the benefit of modvat credit even when these are neither input nor used in or in relation to the manufacture of final products?